

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 05-0500
Penalty
For the Period: 2000 and 2001

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ISSUE

I. **Tax Administration** – Penalty

Authority: 45 IAC 15-11-2

The taxpayer protests the proposed assessment of a penalty.

STATEMENT OF FACTS

The taxpayer sent the Department a letter requesting a "rehearing with respect to the Department's Letter of Findings 05-0500...." The letter stated that, "The only issue on which a rehearing is requested is the negligence penalty...." The Department granted the taxpayer's request for a rehearing on the penalty issue. This Supplemental Letter of Finding is written pursuant to the information provided in the rehearing request by the taxpayer. More facts will be provided below.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer states in its correspondence to the Department:

In its protest, the Taxpayer requested abatement of the penalty on the ground that the positions it took in its Indiana financial institutions tax return for 2000 and 2001 were not negligent and were based on good faith and reasonable interpretations of Indiana's tax laws.

The taxpayer goes on to note that the "Letter of Findings did not directly address this claim," and the taxpayer further states:

The vast bulk of the tax adjustments for 2000 and 2001 were attributable to the auditor's position that two Nevada corporations indirectly owned by the Taxpayer should be included in the Taxpayer's financial institutions combined returns. The two corporations

(the “Investment Corporations”) were members of a Nevada limited liability company (the “Investment LLC”) that engaged in the investment business.

The taxpayer then turns to its penalty abatement argument, stating that its “reasons for excluding the Investment Corporations from its combined returns” were “based on interpretations of the Indiana financial institutions tax statutes and the Commerce Clause of the United States Constitution.” The taxpayer states:

At the time that the Taxpayer filed its tax returns, the Department had never addressed the issues involved in any regulation, published ruling, or bulletin. Thus, there was no published guidance which the Taxpayer either could rely upon or contravene at its risk. Instead, this case raise [*sic*] issues of statutory interpretation and questions of first impression. The Taxpayer had a reasonable basis for these positions even if the Department reached a contrary conclusion under its reading of the statutes.

The taxpayer argues that the “Tennessee Department of Revenue reached a conclusion in agreement with the Taxpayer with respect to identical language” and that “[i]t is difficult to understand how the Taxpayer can be classified as negligent in taking a position which is identical to that followed by the Tennessee Department of Revenue in published rulings.” The Taxpayer also notes “that there are reasonable arguments on both sides even if the Department ultimately does not agree with the Taxpayer’s analysis.”

Indiana’s penalty regulation is 45 IAC 15-11-2, which states in relevant part:

(b) “Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) is also of import, and states that the Department “shall waive the negligence penalty ... if the taxpayer affirmatively establishes that the failure ... was due to reasonable cause and not due to negligence.” 45 IAC 15-11-2(c) further states, “Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.” The Department finds that the taxpayer has established “reasonable cause” and that the penalty should be waived.

FINDING

The taxpayer’s penalty protest is sustained.